IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1919 OF 2006

ICICI Securities Ltd. .. Petitioner

V/s

Asstt. Commissioner of Income Tax 3(2), Mumbai & Anr. .. Respondents

Mr.J.D. Mistry i/b Kanga & Company for the Petitioner.

Mr.A.N. Kotangale with Mr.S.R. Chauhan for the Respondents.

CORAM : H.L. GOKHALE & J.P. DEVADHAR, JJ.

DATE : 22ND AUGUST 2006

P.C. :

1. Heard Mr.Mistry for the Petitioner and Mr.Kotangale for the Respondents. The Respondents have filed their reply and the rejoinder has also been filed by the Petitioner.

2. Rule. Rule is made returnable forthwith. 3. We have noted the submissions of both the parties. The Petitioner is a public limited company engaged in the business of carrying on various non-banking financial activities. The present petition is concerning the assessment year 1999-2000. The assessment of the

Petitioner for that year had been finalised under section 143 of the Income Tax Act. An order in that behalf was passed earlier on 28th March 2002 determining the income of the Petitioner as Rs.27.72 crores. Thereafter the 1st Respondent sought to reopen the assessment and the reasons for reopening the assessment recorded vide his letter dated 27th March 2006 disclose that it is essentially after having another look at the annual accounts which had been furnished earlier. The officer records that now it is noticed that during that year the assessee company had incurred a loss in trading in share. The officer thereafter discusses the various entries appearing in the opening and closing stocks and purchases and sales of those stocks. Thereafter the officer has concluded that there is a loss of Rs.19.86 crores and that the loss was speculative one. He has therefore come to a conclusion that the income chargeable to tax to the extent of Rs.19.86 crores has escaped the assessment and that is how he has passed the order under section 147 of the Income Tax Act although almost 4 years have gone after the assessment of the concerned year.

4. Mr.Mistry, learned counsel for the Petitioner, points out that the reasons given by the 1st Respondent in his order dated 27th March 2006 are clearly based on the documents, which the Petitioner had already

furnished, containing the accounts tendered by the Petitioner. There is nothing new that has come to the notice of the revenue at this point of time. It is only a different analysis which is now being done and the conclusion is being drawn that its income to the extent of Rs.19.86 crores has escaped the assessment. In his submission, this is impermissible under the powers that are available to the revenue under section 147 of the Income Tax Act. It can only be where there is a failure on the part of the assessee to make a true return which is what provided in proviso to section 147 and wherein such a reopening would be permissible after the expiry of four years. In the instant case, nothing of the kind has happened.

5. Mr.Kotangale, learned counsel for the Respondents, has drawn our attention to a judgment of the Apex Court in the case of **Sri Krishna Pvt. Ltd. v. Income Tax Officer - 221 I.T.R. 538**. In this case, what is held by the Apex Court is that where certain loan transactions were relied upon and which were subsequently discovered to be false, reassessment proceedings were validly initiated. What is however material to note is that in that particular case the Court has given a clear finding that the assessee had created and recorded bogus entries of loan and, therefore, the Court held that the assessee could not

say that it had truly and fully disclosed all material facts necessary for the assessment for the concerned year.

6. The second judgment relied upon by Mr.Kotangale is in the case of **Phool Chand Bajrang Lal v. Income Tax Officer - 203 I.T.R. 456**. In this case, the reopening was permitted in view of subsequent information which was found to be definite, specific and reliable. This subsequent information included the confession of the Managing Director that the company had not advanced any loan to any person during the period covered and for which certain cash loans were supposed to have been advanced. It was in the facts of this particular development that the Apex Court held that the reopening was justified.

7. In the facts of the present case, there is nothing new which has come to the notice of the revenue. The accounts had been furnished by the Petitioner when called upon. Thereafter the assessment was completed under section 143(3) of the Income Tax Act. Now, on a mere relook, the officer has come to the conclusion that the income has escaped assessment and he is of course justified in his analysis. In our view, this is not something which is permissible under the proviso to section 147 of the Income Tax Act which speaks about a

failure on the part of the assessee to make a proper return. In the present case, no such case is made out on the record.

8. In the circumstances, we allow this petition in terms of prayer (a) and quash and set aside the notice dated 27th March 2006 directing reopening of the assessment for the year 1999-2000.

9. Rule is made absolute as above with no order as to costs.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR J.)